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HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION No. 1571 of 2006

PETITIONER : Parvatia

VERSUS

RESPONDENTS : Padmini & Others

Post for order on 17th April, 2007

Sd/-
Satish K.Agnihotri
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

S.B. : HON'BLE JUSTICE SHRI SATISH K. AGNIHOTRI

WRIT PETITION No. 1571 of 2006

PETITIONER : Parvatia W/o Ram Prasad Aged about 46 Years R/o Vill & Panchayat Govinvan P.S. Bilaigarh, District Raipur (C.G.)

VERSUS

RESPONDENTS :
1. Padmini W/o Jagannath Kalaar
2. Geeta devi W/o Rajesh Satnami
3. Darupadi Bai Widow /o Santram, Caste Gada
4. Jankibai W/o Labhoram Caste Sahu,
5. Renuka W/o Raman Singh Caste Thakur
6. Hembai W/o Hemlal Caste Kalaar
7. Presiding Officer, Polling Booth No. 114,
8. Presiding Officer, Polling Booth No. 115
9. Returning Officer Cum Nayab Tahsildar The. Bilaigarh, Distt Raipur (C.G.)
10. Sub-Divisional Officer, Bilaigarh, Distt. Raipur (C.G.)
11. M.D.Kanvre, Sub Divisional Officer, Tahsil Bilaigarh, District Raipur C.G.

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUE OF AN APPROPRIATE WRIT IN THE NATURE OF MANDAMUS/CERTIORARY ETC. OR DIRECTION/ORDER IN THE LIKE NATURE ETC.

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Present: Shri Rajesh Pandey, Advocate with Shri Rakesh Pandey, Advocate for the petitioner.
Shri B.D.Guru, Advocate for respondent no. 1.
Shri Utkarsh Verma, Deputy Govt. Advocate for the respondent no. 10 and 11.

ORDER
(Passed on 17th day of April, 2007)

1. The petitioner is the elected Sarpanch of Gram Panchayat Govinvan, Tahsil Bilaigarh, District Raipur in the election held on 15.01.2005, after drawing a lot on 18.01.2005 by the Returning Officer, as the petitioner and the respondent no. 1 secured equal number of votes i.e. 365-365.

2. The respondent no. 1 filed election petition under the provisions of section 122 of the Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (hereinafter referred to as 'the Adhiniyam, 1993) on 21.2.2005 before the Specified Officer i.e. the Sub Divisional Officer, Bilaigarh, District Raipur. The petitioner filed her written statement to the election petition and submitted specifically that the petitioner and the respondent no. 1 had secured equal votes and with the consent of respondent no. 1, the result was declared on account of draw of lots. Respondent no. 1 did not raise any objection to the procedure of draw of lots. Thereafter, the Specified officer, without framing issues and without conducting the trial of the case, directed for recounting of votes. The said order was impugned in W.P. No. 3187 of 2006 (Parvatia Vs. Padmini & Others). This Court, vide order dated 31.8.2005, set aside the order passed by the Specified Officer and directed the Specified officer to proceed with the matter and decide the same after giving opportunity of hearing to the parties to adduce their evidence and cross examine the witnesses of the other parties. The Sub

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Divisional Officer, thereafter, framed issues and examined the evidence adduced by both the parties and after considering, came to the conclusion that the son of the petitioner congratulated the son of the respondent no. 1 which led into victory procession on the basis that counting slips of polling station no. 114 and 115 was not given to all the agents except to the son of the petitioner. Accordingly, the Sub Divisional Officer directed recounting of votes polled in polling station no. 114 and 115 of Gram Panchayat Govinvan vide order dated 21.03.2006 (Annexure P/1)

3. Being aggrieved and dissatisfied with the impugned order, the petitioner vide this petition has, challenged the legality and validity of the impugned order.

4. Shri Rajesh Pandey, learned counsel appearing for the petitioner would submit that the Specified Officer has directed recounting of votes without any application made for the same during counting of votes before the appropriate authority. The order passed by the Specified authority is contrary to the principles of recounting of votes as laid down by the Supreme Court in various cases. The respondent no. 1 has acquiesced for re-counting of votes as respondent agreed for declaration of result by draw of lots without any demur. The petition ought to have been dismissed on the ground of lack of material facts and proper pleadings regarding irregularities and illegalities committed in the counting of votes. The verification of the election petition was also not in accordance with law.

5. Shri B.D.Guru, learned counsel appearing for the respondent no. 1 would submit that the contention of the petitioner that the verification of the election petition was not in accordance with law, could not be permitted to be raised at this stage when the petitioner has not raised the said ground in the election petition. Secondly, the ground of lack of material facts was also not raised in the

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election petition seeking for dismissal of the election petition. On other grounds it was contended that the sufficient opportunity of hearing was not given to the respondents to raise the issue, and even otherwise the respondent no. 1 is not debarred from raising issue of re-counting of votes after the result by draw of lots has been declared.

6. I have heard the learned counsel appearing for the parties, perused the pleadings and documents appended thereto. The question of maintainability of election petition on account of infraction of Rule 5(a) and (c) of C.G. Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995 (hereinafter referred to as "the Rules, 1995") was not raised before the Specified Officer. The verification was not in accordance with law was also not raised either before the Specified Officer or in the pleadings before this Court.

7. The respondent no. 1 in her election petition has pleaded the material facts as under:

"6. यह कि याचिकाकर्ती तथा उसके समर्थकों के द्वारा विजय जुलूस में निकल जाने के बाद अनावेदिका कमांक 1 परबतिया के द्वारा अपने पुत्र सुकदेवप्रसाद जो कि ग्रा. पं. गोविंदवन का पूर्व सरपंच था उसकी मदद से पीठासीन अधिकारी अनावेदक कमांक 7 एवं 8 से सांठगांठ कर लिया गया जिसके चलते उक्त पीठासीन अधिकारियों के द्वारा सहायक निर्वाचन अधिकारी बिलाईगढ़ के समक्ष गलत गणना पत्रक प्रस्तुत करते हुये मतदान केन्द्र कमांक 114 में याचिकाकर्ती को 159 के बजाय 2 मत कम करके 157 वोट प्राप्त करना बता दिया गया है तथा अवैध मत 35 के स्थान पर 2 मत बढाकर 37 मत अंकित कर दिया गया है। इसी तरह मतदान केन्द्र कमांक 115 में अनावेदिका कमांक 1 परबतिया को प्राप्त 169 वोट के स्थान पर 170 वोट बताकर एक वोट अधिक बढा दिया गया है तथा अवैध मतों की संख्या 41 थी उसे 1 वोट कम करके 40 वोट अंकित कर दिया गया और इस तरह याचिकाकर्ती तथा अनावेदिका कमांक 1 परबतिया को बराबर बराबर 365 – 365 वोट प्राप्त होने की गलत एवं षडयंत्र पूर्ण जानकारी तथा गणना पत्रक प्रस्तुत कर दिया गया। जिसके आधार पर दिनांक 18.1.2005 को याचिकाकर्ती

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और अनावेदिका कमांक 1 परबतिया के मध्य टास द्वारा चुनाव कराने की कार्यवाही करतें हुये यहां पर भी षडयंत्र पूर्ण कार्यवाही किया गया और अनावेदिका परबतिया को टास में जीतना बता दिया गया जबकि याचिकाकर्ती को परबतिया के नाम से निकला हुआ चिट को नहीं बताया गया और ना ही याचिकाकर्ती के नाम के चिट को बताया गया। इस तरह अनावेदिका कमांक 1 परबतिया जो कि 3 वोट से हार चुकी थी उसे किसी तरह जिताने की गरज से घोर षडयंत्र पूर्ण कार्यवाही किया गया है जो कि पूर्णतः अवैधानिक कृत्य है।

8. यह कि मतदान केन्द्र कमांक 115 में पीठासीन अधिकारी द्वारा स्वतः एक फर्जी वोट डाला गया है और अनावेदिका परबतिया को जिताने का प्रयास किया गया है। उक्त फर्जी मत अगम वल्द जोहित जाति कलार के नाम का है ।

9. यह कि ग्रा. पं. गोविदंवन के सरपंच पद हेतु डाले गये मत पत्रों की पुर्नगणना एवं जांच किया जाय तो याचिकाकर्ती 3 वोट से अवश्य जीत हासिल करेगी।"

8. The petitioner, in her written statement dated 23.3.2005 (Annexure P/3) has not objected to lack of material facts the defects in verification. The evidences were examined. On perusal of the election petition, it is evident that the respondent no. 1 has pleaded material facts and particulars with regard to relief for recounting of votes. So far as the defect in verification is concerned, that was neither raised in the written statement filed by the petitioner nor in the petition filed herein.

9. Law in regard to counting of votes is well settled. The Supreme Court, in case of P.K.K.Shamsudeen, v. K.A.M Mappillai Mohindeen, (1989) 1 SCC 526, observed as under :

> "**13.** Thus the settled position of law is that the justification for an order for examination of ballot papers and recount of votes is not to be derived from hindsight and by the result of the recount of votes. On the contrary, the justification for an order of recount of votes should be provided by the material placed by an election petitioner on the threshold before an order for recount of votes is actually made. The reason for this salutary rule is that the

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preservation of the secrecy of the ballot is a sacrosanct principle which cannot be lightly or hastily broken unless there is prima facie genuine need for it. The right of a defeated candidate to assail the validity of an election result and seek recounting of votes has to be subject to the basic principle that the secrecy of the ballot is sacrosanct in a democracy and hence unless the affected candidate is able to allege and substantiate in acceptable measure by means of evidence that a prima facie case of a high degree of probability existed for the recount of votes being ordered by the Election Tribunal in the interests of justice, a Tribunal or court should not order the recount of votes."

10. In cas of M. Chinnasamy v. K.C. Palanisamy,(2004) 6 SCC 341, the Supreme Court held as under:

"**28.** The law operating in the field is no longer res integra. Inspection of ballot papers can be ordered when in the facts and circumstances obtaining in the case, the Tribunal finds it necessary to so direct in the interest of justice. Discovery and inspection of documents with which the civil court is invested with power under the Code of Civil Procedure when trying a suit may be applied but such an order would not be granted as a matter of course having regard to the insistence upon the secrecy of the ballot papers. Such an inspection may be ordered when two conditions are fulfilled:

(*i*) that the petition for setting aside an election contains an adequate statement of the material facts on which the petitioner relies in support of his case; and

(*ii*) the Tribunal is prima facie satisfied that in order to decide the dispute and to do complete justice between the parties inspection of the ballot papers is necessary."

11. In case of Chandrika Prasad Yadav v. State of Bihar (2004) 6 SCC, the Supreme Court has held as under:

"20. It is well settled that an order of re-counting of votes can be passed when the following conditions are fulfilled:

(i) a prima facie case;

(ii) pleading of material facts stating irregularities in counting of votes;

(iii) a roving and fishing inquiry shall not be made while directing re-counting of votes; and

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(iv) an objection to the said effect has been taken recourse to.

21. The requirement of maintaining the secrecy of ballot papers must also be kept in view before a re-counting can be directed. Narrow margin of votes between the returned candidate and the election petitioner by itself would not be sufficient for issuing a direction for re-counting."

12. In the case of Gursewak Singh v. Avtar Singh (2006) 4 SCC 542, the Supreme Court has held as under:

> "**22.** The said dicta has been reiterated in M.Chinnasamy v. K.C.Palanisamy, Hoshila Tiwari v. State of Bihar and Tanaji Ramchandra Nimhan v. Swati Vinayak Nimhan. The reason why we referred to the said decision is that at every level, in case of a challenge to an election, pleadings of the parties have been held to play a significant role."

13. The decision of this Court in Ramdeo Ram Vs. Vijaynath and others, 2007(1) CJLJ 215, relied on by the learned counsel appearing for the petitioner is of no help to the present case as in the present case, no objection was raised at any point of time either in the election petition or in the writ petition with regard to lack of material facts or incomplete verification as per law.

14. It is clear from the law laid down by the Supreme Court in various cases cited above that the election petitioner must prove proper pleadings in order to seek relief of recounting of votes. In the present case, on perusal of the writ petition, it appears that the petitioner has sufficiently pleaded the material facts for grant of relief of recounting of votes.

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15. I am of the considered opinion that the order of recounting of votes directed by the Specified Officer on the basis of pleadings and on the evidences adduced by the parties is just and proper and needs no interference by this Court.

16. In view of the above, this petition stands dismissed.

Sd/-
Satish K.Agnihotri
Judge

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